L05-09289

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

TOMMIE MAE SMITH	:	
Plaintiff	:	
v.	:	CAL 05-09289
VINCENT ABELL	:	
Defendant	:	

OPINION AND ORDER OF COURT

INTRODUCTION AND PRELIMINARY FINDINGS OF FACT

Approximately two years ago, Defendant Vincent L. Abell ("Mr. Abell"), took advantage of an elderly lady during a difficult time in her life. Plaintiff Tommie Mae Smith ("Ms. Smith") was an easy target for Mr. Abell and his agents/employees.

When Mr. Abell's agents/employees arrived on Ms. Smith's doorstep on April 26, 2004, Ms. Smith was financially distressed, emotionally vulnerable, and physically infirm. Preying upon Ms. Smith's desire to remain in her home, Mr. Abell, through his agents/employees, fraudulently induced Ms. Smith to sign away title to her home with minimal, if any, consideration.

Ms. Smith is only one of Mr. Abell's many victims. Mr. Abell has repeated this scheme, or variations of it, on numerous other similarly situated individuals in Prince George's County, other Maryland counties, and the District of Columbia. Vincent Abell owns 49 parcels of real property assets valued at more than $4,000,000, in Montgomery County alone as of December 12, 2005. He acquired those properties through schemes similar to the one he employed in this case. None of these parcels of property has a loan to value ratio equal to 50%.

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PROCEDURAL HISTORY

On May 5, 2005, Plaintiff, Tommie Mae Smith filed a Complaint for Declaratory Judgment and Other Related Relief (Lis Pendens Action) under Maryland Code, Courts and Judicial Proceedings Article, §§ 3-401 to -415 and Maryland Rule 12-102.

Alleging Intentional Misrepresentation (Fraud), in preparing and recording a Deed, and Breach of Contract, Ms. Smith requested that this Court (1) declare the Contract and the Deed null and void and of no further force and effect and (2) award Ms. Smith $500,000 of punitive damages and $50,000 of actual damages.

As Mr. Abell had not filed an Answer to the Complaint as of September 1, 2005, Ms. Smith filed a Motion for Default Judgment under Maryland Rule 2-613. In an Order signed by Judge Thomas P. Smith on October 11, 2005, this Court ordered that an Order of Default be entered against Mr. Abell and set a later hearing date for the determination of what, if any damages should be awarded to the Plaintiff, as a result of the tortious action of the Defendant, legally admitted by his default.

At the Ex Parte Hearing on damages before this Court on December 12, 2005, Melanie Simon, Esquire (Ms. Smith's granddaughter and attorney-in-fact), and Michael Greg Morin, Esquire, an attorney employed entirely in private practice, testified as to the acts of the Defendant, Vincent Abell in this reprehensible case and other cases.

Mr. Morin has been investigating Mr. Abell. He plans to comprehensively present information on Mr. Abell to other attorneys in private practice, the Attorney General of Maryland, and State's Attorneys upon request. Mr. Morin has also worked with Doyle Niemann, an Assistant State's Attorney in Prince George's County and member of the

Maryland House of Delegates, to provide testimony for emergency legislation sponsored in the House by Mr. Niemann.

In the 2005 session of the General Assembly that legislation was introduced concurrently in the House and in the Senate. The General Assembly subsequently passed the emergency legislation, with no dissenting votes in the House or in the Senate. The Governor signed the legislation into law, as the Protection of Homeowners in Foreclosure Act, on May 26, 2005.

At the Hearing, this Court also admitted into evidence eleven Exhibits, Plaintiff's Exhibits 1-5, 7, 9, 11-13, and 17. These Exhibits and the uncontradicted testimony of Ms. Simon and Mr. Morin form the basis for this Court's subsequent Fact-Finding set forth in this Opinion. Neither Mr. Abell nor Mr. Abell's counsel appeared at this "Ex Parte" Hearing nor any prior proceeding notwithstanding their receiving notice thereof.

At the end of the Hearing, this Court based on the evidence presented summarily declared the Deed "null and void and of no further force and effect." The case was then taken under advisement to consider the further relief requested by Plaintiff. Per this Court's instructions, Ms. Smith's counsel submitted Proposed Findings of Fact and Conclusions of Law as well as a Proposed Order on or before January 9, 2006. The Opinion and Judgment of this Court that follow are the result of that further consideration.

FINDINGS OF FACT

Ms. Smith, 83, is in generally poor physical but good mental health. She suffers from diabetes and hearing loss. Ms. Smith was also unable to attend the Ex Parte Hearing because she suffered a minor stroke as a result of a thrombosis a few days before the Hearing.

Ms. Smith's monthly income includes $1197 Social Security income and $117 retirement income from Ms. Smith's husband, for a total income of $1314 per month. Before June 2005, Ms. Smith received no additional income from family members.

On July 8, 1993, Ms. Smith and her daughter, Bernice Smith, purchased a home at 6104 Tarquin Court, Temple Hills, Maryland 20748. Their Deed is recorded among the Land Records of Prince George's County, Maryland, in Liber 8904, folio 182. *See* Plaintiff's Exhibit 1.

Mother and daughter shared their home for nearly ten years, until Bernice passed away on April 3, 2003. As mother and daughter had been joint tenants on their Deed, Ms. Smith became the sole owner of her home upon her daughter's passing. *See* Plaintiff's Exhibit 1.

Since Ms. Smith purchased her home, she and various other family members have continuously used her home as a principal residence. Ms. Smith's home was subject to a Deed of Trust with a monthly principal and interest payment of $1655.22, more than Ms. Smith's total monthly income.

The approximate value of Ms. Smith's home is $370,000. The current loan balance is approximately $170,000. Therefore, Ms. Smith currently has approximately $200,000 of equity in her home.

Green Tree Mortgage currently holds the Deed of Trust under loan number 6905681703. Because this loan was substantially in arrears, Green Tree initiated a foreclosure proceeding against Ms. Smith in March 2004. It was at that point that Mr. Abell targeted Ms. Smith.

Learning of the pending foreclosure, Mr. Abell's agents/employees went to Ms. Smith's home on April 26, 2004. There, Calvin Baltimore, Mr. Abell's agent/employee, spoke to Veronica Ruffin (Ms. Smith's niece) and Calvin Ruffin, Jr., who were both residing with Ms. Smith at the time. While living there, the Ruffins contributed little or no rent or other payments toward the home.

Mr. Baltimore offered to purchase Ms. Smith's home, to bring Ms. Smith out of foreclosure, and to allow Ms. Smith to stay in her home under a lease agreement that required Ms. Smith to pay, for one year, a rent of $1965 per month, an amount larger than her then-current mortgage payment. Under Mr. Baltimore's offer, after one year, Ms. Smith would have the option to repurchase her home. Mr. Baltimore presented to Ms. Ruffin certain documents, including an "Agreement to Sell Real Estate." Ms. Ruffin advised Ms. Smith that Mr. Baltimore's documents would save her home from foreclosure.

At some point thereafter, still on April 26, 2004, Mr. Baltimore, as the Buyer, and Ms. Ruffin, as the Seller with the notation "POA," signed the "Agreement to Sell Real Estate." Mr. Ruffin witnessed both signatures. As the Seller is listed at the top of the document as Mr. Abell or his assignee, Mr. Abell did not sign the "Agreement to Sell Real Estate." *See* Plaintiff's Exhibit 2. Ms. Smith was provided with a copy of the "Agreement to Sell Real Estate." However, she never signed the document, nor has she ever signed or even seen a Power of Attorney for Ms. Ruffin to act on her behalf.

Further, although Ms. Smith's signature appears on a Deed later recorded by Mr. Abell, Ms. Smith did not sign nor was she provided with a copy of this Deed. Clearly Tommie Mae Smith did not have any knowledge of any action taken by either the Ruffins or

anyone else to convey her property to Mr. Abell nor did she intend to do so. In fact Ms. Smith has never met Mr. Abell.

Mr. Abell never performed any of the obligations that he had under the "Agreement to Sell Real Estate" that was executed by Mr. Baltimore on April 26, 2004. For instance, although the "Agreement to Sell Real Estate" provided for a closing on or before April 29, 2004 (three days after the Deed was signed), no closing took place.

The "Agreement to Sell Real Estate" also provided that the loan balance of approximately $168,000 would be paid off, but it was not. Further, although the "Agreement to Sell Real Estate" provided that Modern Management, Inc., a corporation exclusively controlled by Mr. Abell, would hold a $16,000 deposit, Ms. Smith did not receive verification of a deposit.

On January 6, 2005, Modern Management filed a Complaint for Repossession of Rented Property against Ms. Smith in the District Court for Prince George's County, Maryland, Case No. 187422. The Complaint alleged that Ms. Smith had rent due in the amount of $18,182.26. *See* Plaintiff's Exhibit 4.

Although the "Agreement to Sell Real Estate" had provided that the loan balance of approximately $168,000 would be paid off, Green Tree, through its Substitute Trustees, Jeffrey Fisher et al., initiated a foreclosure proceeding against Ms. Smith in this Court, Case No. CAE 05-06577, on March 25, 2005. *See* Plaintiff's Exhibit 7. Green Tree alleged that Ms. Smith had defaulted in payments, with an arrearage of approximately $19,000.

On April 7, 2005, Mr. Abell recorded a Deed, dated May 1, 2004, to Ms. Smith's home stating a consideration of $174,661. The Deed was recorded among the Land Records

of Prince George's County in Liber 21777, folio 426. However, the "being clause" in the Deed recites Liber 5002, folio 613, which is not Ms. Smith's home. *See* Plaintiff's Exhibit 3.

On May 3, 2005, Ms. Smith stayed the District Court action by seeking relief by filing a Chapter 13 bankruptcy in the United States Bankruptcy Court for the District of Maryland, Case No. 05-20416. *See* Plaintiff's Exhibit 6. Ms. Smith filed her Plan approximately one week after the United States Bankruptcy Court for the District of Columbia confirmed it. *See* Plaintiff's Exhibits 8-9, 11.

Ms. Smith has made all of the required payments to her Chapter 13 Trustee, Timothy P. Grant, Esquire, to cure the deficiencies due and owing to Green Tree under her Plan. These payments include a $1603.28 payment of an attorney fee to the Fisher Law Group, attorneys for Green Tree, on May 17, 2005. Ms. Smith has also made regular payments on the First Trust to Green Tree, up through, at the least, the Ex Parte Hearing on December 12, 2005. *See* Plaintiff's Exhibit 12.

On June 27, 2005, the United States Bankruptcy Court for the District of Maryland conditionally denied Modern Management's Motion seeking relief from the stay imposed on its District Court action. On October 19, 2005, Judge Paul Mannes subsequently denied the Motion, with the notation that the parties may proceed with the above-captioned case in this Court. *See* Plaintiff's Exhibit 10. Therefore, Ms. Smith was never evicted as a result of the District Court proceedings.

Michael Greg Morin, Esquire, an attorney employed entirely in private practice, became acquainted with Mr. Abell approximately one year ago in relation to similar fraud cases involving foreclosures as Mr. Morin worked with Doyle Niemann, Assistant State's Attorney and member of the Maryland House of Delegates, to provide testimony for

emergency legislation sponsored in the House by Mr. Niemann. The Bill had been introduced concurrently in the House and in the Senate as Senate Bill 761.

The General Assembly subsequently passed the emergency legislation, with no dissenting votes in the House or in the Senate, and the Governor signed the legislation into law, as the Protection of Homeowners in Foreclosure Act, on May 26, 2005. *See* MD. CODE ANN. REAL PROP. § 7-301 to -231 (2005).

Minimum compliance with the Protection of Homeowners in Foreclosure Act would have precluded the fraud in this case. The Act provides attorneys in private practice, the Attorney General, State's Attorneys, and others with tools to end the fraud.

Since Michael Morin testified before the Maryland Legislature, three different Plaintiffs have retained him as counsel to pursue cases against Mr. Abell that appear to be similar to this case. Mr. Morin has also consulted on three other cases against Mr. Abell that are similar to this case. He is currently gathering information on Mr. Abell and plans to comprehensively present the information to other attorneys in private practice, the Attorney General, and State's Attorneys upon request.

Mr. Morin testified, at the Ex Parte Hearing in this case, that Mr. Abell is a convicted felon. Though a minimum player at the time, Mr. Abell was convicted in what the Washington Post and others have called the largest real estate mortgage scandal in the history of the District of Columbia. Though not currently incarcerated or under indictment, Mr. Abell is the subject of open investigations. Likely not coincidentally, there are variations on the spelling of Mr. Abell's last name.

On December 7, 2005, Michael Morin in his capacity as counsel representing a mortgagor, whose home was the subject of a foreclosure suit first filed in June 2005, filed a

Cross-Claim and Third-Party Complaint against Mr. Abell, Modern Management, and several of Mr. Abell's acquaintances. Counts set forth in that Cross-Claim and Third-Party Complaint include Fraud and Quiet Title. As of the date of the Ex Parte Hearing, December 12, 2005, nineteen Plaintiffs were involved with Mr. Morin's Cross-Claim and Third-Party Complaint. *See* Plaintiff's Exhibit 17.

Further, AARP has brought a class action lawsuit against Mr. Abell. The experience of the six Plaintiffs described in that case is virtually identical to that of Ms. Smith. This Court is convinced by Michael Morin's testimony that Mr. Abell has a history of scamming the most vulnerable members of our society, at the most needy times of their lives, throughout our region.

CONCLUSIONS OF LAW

Under her Chapter 13 Plan, Ms. Smith paid the Fisher Law Group, Attorneys for Green Tree, a $1603.28 attorney fee. She also paid her attorney in this case, Joseph V. Kneib, Esquire, $9365 in attorney fees. Therefore, this Court is satisfied that Ms. Smith is entitled to $10,968.28 of actual damages.

This Court is also satisfied that Ms. Smith is entitled to $500,000 in punitive damages. This Court is unaware of any other judgment awarding punitive damages against the Defendant Vincent Abell ever being granted by any Court of competent jurisdiction prior to the instant Opinion and Order in this case.

As a threshold matter, punitive damages are allowable in this case. The four requirements for any Maryland Court to award punitive damages are all present in this case.

First, this case is a tort action in which Mr. Abell perpetrated an Intentional Misrepresentation (Fraud) upon Ms. Smith in a manner in which the potential harm to Ms.

Smith was clearly foreseeable. *See Bowden v. Caldor*, 350 Md. 4, 22, 710 A.2d 267, 276 (1998) ("[P]unitive damages are allowable only in tort actions.")

Second, the Complaint in this case contains a specific claim for punitive damages. *See Bowden*, 350 Md. at 22, 710 A.2d at 276 ("[F]or a plaintiff to recover punitive damages, the complaint must contain a specific claim for punitive damages ... .").

Third, Ms. Smith has proven by clear and convincing evidence that actual malice motivated Mr. Abell's conduct of defrauding Ms. Smith. *See Bowden*, 350 Md. at 24, 710 A.2d at 277 (A "plaintiff must establish by clear and convincing evidence the basis for an award of punitive damages."); *Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420, 465-69, 601 A.2d 633, 655-57 (1992). Further, "an award of punitive damages must be based upon actual malice, in the sense of conscious and deliberate wrongdoing, evil or wrongful motive, intent to injure, ill will, or *fraud*." *Bowden*, 350 Md. at 23, 710 A.2d at 276 (emphasis added). In this case there was clearly "conscious and deliberate wrongdoing" emanating from an "evil or wrongful motive."

Fourth, this Opinion and Order of Court awards Ms. Smith $10,968.28 of actual damages. *See Bowden*, 350 Md. at 25, 710 A.2d at 277 ("[T]here must be an award of compensatory damages for a particular tort in order for the plaintiff to receive an award of punitive damages based upon that tort.") The Court of Appeals in *Ellerin v. Fairbanks, F.S.B.*, 337 Md. 216, 652 A.2d 1117 (1995), discussed actual malice as required for punitive damages in an action for fraud or deceit. Judge Eldridge writing for a majority of the Court in *Ellerin* recognized that "Maryland cases concerning fraud or deceit have typically involved the form of the tort which is characterized by the defendant's deliberate deception

of the plaintiff by means of a representation which he knows to be false." *Ellerin*, 337 Md. at 234, 652 A.2d at 1126. *Ellerin* concluded that

> the defendant's actual knowledge of falsity, coupled with his intent to deceive the plaintiff by means of the false statement, constitutes the *actual malice* required to support an award of punitive damages. [T]he elements of the tort of fraud or deceit in Maryland, where the tort is committed by a defendant who knows that his representation is false, include the type of deliberate wrongdoing and evil motive that has traditionally justified the award of punitive damages.

Ellerin, 337 Md. at 234-35, 652 A.2d at 1126 (emphasis added). *Ellerin* also noted that, "constructive fraud" and fraud based on "reckless disregard" or "reckless indifference" of the truth of the representation do not support an award of punitive damages.

In this case, the Defendant Mr. Abell's conduct was more egregious than mere "constructive fraud," "reckless disregard," or "reckless indifference." Ms. Smith has proven that the Defendant, Mr. Abell deliberately deceived her by means of representations that he knew to be false.

Therefore, because Ms. Smith has proven actual malice by Mr. Abell, as well as the other requirements for punitive damages, this Court finds that Ms. Smith is entitled to punitive damages. This Court now considers the amount of punitive damages to which Ms. Smith is entitled.

BMW of North America, Inc. v. Gore, 517 U.S. 559, 116 S.Ct. 1589 (1996), instructed courts reviewing punitive damages to consider "[t]hree guideposts ... : the degree of reprehensibility of the nondisclosure; the disparity between the harm or potential harm suffered by [the defendant] and his punitive damages award [("ratio")]; and the difference between this remedy and the civil penalties authorized or imposed in comparable cases." *BMW*, 517 U.S. at 574-75, 116 S.Ct. at 1598-99.

While *BMW* involved a court reviewing the amount of punitive damages determined by a jury, this case involves this Court's determination of the amount of punitive damages based on the testimony given, and the evidence admitted, in an Ex Parte Hearing before only the Judge. Nonetheless, this Court applies the three *BMW* guideposts in making its punitive damages determination.

First, this Court addresses the "degree of reprehensibility" guidepost:

> Perhaps the most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct. As the [Supreme] Court stated nearly 150 years ago, exemplary damages imposed on a defendant should reflect "the enormity of his offense." ... This principle reflects the accepted view that some wrongs are more blameworthy than others. Thus, we have said that "nonviolent crimes are less serious than crimes marked by violence." ... Similarly, "trickery and deceit" ... are more reprehensible than negligence.

BMW, 517 U.S. at 575-76, 116 S.Ct. at 1599 (citations omitted). *BMW* quoted *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 113 S.Ct. 2711 (1993), to further explain this guidepost: "In *TXO*, both the West Virginia Supreme Court and the Justices of this [United States Supreme] Court placed special emphasis on the principle that punitive damages may not be 'grossly out of proportion to the severity of the offense.'" *BMW*, 517 U.S. at 576, 116 S.Ct. at 1599 (quoting *TXO*, 509 U.S. at 453, 482, 113 S.Ct. at 2718, 2733).

More specifically, the Supreme Court

> ha[s] instructed courts to determine the reprehensibility of a defendant by considering whether: the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident. ... The existence of any one of these factors weighing in favor of a plaintiff may not be sufficient to

> sustain a punitive damages award; and the absence of all of them renders any award suspect. It should be presumed a plaintiff has been made whole for his injuries by compensatory damages, so punitive damages should only be awarded if the defendant's culpability, after having paid compensatory damages, is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence.

State Farm v. Campbell, 538 U.S. 408, 418, 123 S.Ct. 1513, 1521 (2003) (citing *BMW*, 517 U.S. at 575-577, 116 S.Ct. at 1589).

Maryland courts have also weighed in on this guidepost by discussing similar factors in their punitive damages determinations, albeit without necessarily using the Supreme Court's "degree of reprehensibility" language. For instance, *Bowden* agreed with *BMW* that "[t]he most important legal rule in this area, applicable to every punitive damages award, is that the amount of punitive damages 'must not be disproportionate to the gravity of the defendant's wrong.'" *Bowden*, 350 Md. at 27, 710 A.2d at 278 (quoting *Ellerin*, 377 Md. at 242, 652 A.2d at 1129-30).

A defendant's engagement

> in some "heinous" or "egregiously bad conduct" does not necessarily justify a large award of punitive damages [because, u]nder Maryland law, engagement in such conduct is a prerequisite for *any* award of punitive damages. ... Accordingly, in determining whether the amount of the award is disproportionate to the gravity of the defendant's conduct, it is the degree of heinousness which is important.

Bowden, 350 Md. at 27, 710 A.2d at 278 (citations omitted).

The "degree of reprehensibility" factors outlined in the above-cited cases are whether: (1) the harm caused by the tortious conduct was physical; (2) the tortious conduct evidenced an indifference to, or a reckless disregard for, the health or safety of others; (3) the target of the tortious conduct was financial vulnerable at the time of the tortious conduct; and (4) the

harm caused by the tortious conduct was the result of intentional malice, trickery, or deceit. This Court addresses each of these factors.

The harm caused by Mr. Abell's tortious conduct was not physical. Mr. Abell attempted to defraud Ms. Smith out of her home and had succeeded until this Court nullified his actions by its Order of December 12, 2005. In doing so, Mr. Abell's tortious conduct did not physically harm Ms. Smith's person.

Mr. Abell's tortious conduct did, however, evidence an indifference to, or a reckless disregard for, Ms. Smith's health. Ms. Smith, an elderly lady, was at the time of this tortious and reprehensible conduct, generally in poor physical health. She suffered then and continues to suffer from diabetes and hearing loss. It is certainly foreseeable that losing her home because of Mr. Abell's fraud could have easily aggravated her health problems. In fact she recently suffered a minor stroke as a result of a thrombosis.

Ms. Smith was also financially vulnerable at the time of Mr. Abell's tortious conduct. Roughly one month before Mr. Abell committed this fraud, Green Tree had initiated a foreclosure proceeding on Ms. Smith's home. Ms. Smith later filed Chapter 13 Bankruptcy. She is currently fulfilling her obligations under the Chapter 13 Plan approved for her.

The harm caused by Mr. Abell's tortious conduct was the result of intentional malice, trickery, or deceit because Mr. Abell exhibited actual malice as described *supra*. The Defendant, Mr. Abell's tortious conduct in this case constitutes the most reprehensible actions this Court has ever observed in his 28 years on the Orphans Court, the District Court, and the Circuit Court save only the physical violence and death routinely visited on the Court's conscious in criminal cases. On a scale of one to ten as to its reprehensibility, one being slightly reprehensible and ten being super reprehensibility, as often described in the

popular Talk Show, the McLaughlin Group, the Court rates this an eleven. If the Defendant sleeps at night, the Court can't help but wonder how.

This Court now addresses the "ratio" guidepost:

> [P]erhaps the most commonly cited indicium of an unreasonable or excessive punitive damages award is the ratio to the actual harm inflicted on the plaintiff. ... The principle that exemplary damages must bear a "reasonable relationship" to compensatory damages has a long pedigree. Scholars have identified a number of early English statutes authorizing the award of multiple damages for particular wrongs. Some 65 different enactments during the period between 1275 and 1753 provided for double, treble, or quadruple damages.

BMW, 517 U.S. at 580-81, 116 S.Ct. at 1601. To further explain this guidepost, *BMW* again cited *TXO*, along with *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 111 S.Ct. 1032 (1991):

> Our decisions in both *Haslip* and *TXO* endorsed the proposition that a comparison between the compensatory award and the punitive award is significant.
> In *Haslip* we concluded that even though a punitive damages award of "more than 4 times the amount of compensatory damages" might be "close to the line," it did not "cross the line into the area of constitutional impropriety." ... *TXO*, following dicta in *Haslip*, refined this analysis by confirming that the proper inquiry is "'whether there is a reasonable relationship between the punitive damages award and *the harm likely to result* from the defendant's conduct as well as the harm that actually has occurred.'" ... Thus in upholding the $10 million award in *TXO*, we relied on the difference between that figure and the harm to the victim that would have ensued if the tortious plan had succeeded. That difference suggested that the relevant ratio was not more than 10 to 1.

BMW, 517 U.S. at 581, 116 S.Ct. at 1601-02 (citations omitted). "In sum, courts must ensure that the measure of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered." *State Farm*, 538 U.S. at 426, 123 S.Ct. at 1524.

In *BMW* and *State Farm*, the amount of the punitive damages awarded by the jury was 500 times and 145 times the amount of the actual harm as determined by the jury, respectively. In *BMW*, where "the ratio was a breathtaking 500 to 1, ... the award must surely 'raise a suspicious judicial eyebrow.'" *BMW*, 517 U.S. at 583, 116 S.Ct. at 1603 (quoting *TXO*, 509 U.S. at 481, 113 S.Ct. at 2732 (O'Connor, J., dissenting)). Similarly, the Supreme Court, in *State Farm*, "ha[d] no doubt that there was a presumption against an award that has a 145-to-1 ratio." *State Farm*, 538 U.S. at 426, 123 S.Ct. at 1524.

In each case, however, the Supreme Court reversed the judgment and remanded the case without recommending a more appropriate ratio. The Supreme Court in *BMW*, like "in *Haslip*, [was] not prepared to draw a bright line marking the limits of a constitutionally acceptable punitive damages award. Unlike [in *Haslip*], however, [the Supreme Court in *BMW* was] fully convinced that the grossly excessive award imposed in [*BMW*] transcend[ed] the constitutional limit." *BMW*, 517 U.S. at 585-86, 116 S.Ct. at 1604.

Maryland courts have also weighed in on this guidepost by discussing similar factors in their punitive damages determinations. For instance, *Bowden* quoted *BMW* for "[t]he principle that exemplary damages must bear a 'rational relationship' to compensatory damages." *Bowden*, 350 Md. at 38, 710 A.2d at 284 (quoting *BMW*, 517 U.S. at 580, 116 S.Ct. at 1601).

Bowden also noted that

> in some states where the matter is controlled by statutes, there are statutory provisions that the amount of a punitive damages award, where authorized, may not exceed three times the amount of the plaintiff's actual or compensatory damages. ... This three to one ratio corresponds to numerous statutes in Maryland and throughout the country, ... authorizing treble damages as a civil penalty. ... Although courts in cases not controlled by statutory provisions have not regularly drawn analogies to such treble damage statutes,

> nonetheless we believe that the three to one ratio frequently appearing in statutory provisions is some indication of public policy concerning the relationship of monetary punishments to actual damages. While this public policy may be appropriately considered along with other factors, we do not suggest that punitive damages awards in most cases must reflect this ratio.

Bowden, 350 Md. at 39, 710 A.2d at 284, n.11.

Further, although the "reasonable relationship" analysis is generally useful, *Bowden* agreed with *BMW* and *TXO* that

> there are situations in which little or no consideration should be given to the relationship which punitive damages awards bear to compensatory damages awards. For example, where the defendant engages in extremely heinous conduct having great potential for harm, but because of fortuitous circumstances the plaintiff does not suffer a great deal of compensatory harm, the amount of the compensatory damages award furnishes a poor guide to the amount of an appropriate punitive damages award.

Bowden, 350 Md. at 40, 710 A.2d at 285 (citing *BMW*, 517 U.S. at 582, 116 S.Ct. at 1602; *TXO*, 509 U.S. at 460, 113 S.Ct. at 2721-22).

As a preliminary matter, the above-cited cases discussing the proper "ratio" or "reasonable relationship" established the factor of whether the potential harm from the tortious conduct exceeded the actual harm from the tortious conduct. If so, then *TXO* would be an analogous case for this guidepost.

However, in this case, the potential harm from Mr. Abell's tortious conduct did not exceed the actual harm from Mr. Abell's tortious conduct: Mr. Abell succeeded in his fraud, and, as a result, Ms. Smith lost her home until this Court intervened on December 12, 2005. Ms. Smith also suffered the actual harm of attorneys' fees resulting from Mr. Abell's fraud.

The remaining above-cited cases discussing the proper "ratio" or "reasonable relationship" also established that: (1) the ratio should not be more than 145:1; and (2)

double, treble, and quadruple punitive damages are acceptable. This Court balances this guidance with the other two *BMW* guideposts.

Third, this Court addresses the "comparable cases" guidepost. A "court ... should 'accord substantial deference to legislative judgments concerning appropriate sanctions for the conduct at issue.'" *BMW*, 517 U.S. at 583, 116 S.Ct. at 1603 (quoting *Browning-Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 301, 109 S.Ct. 2909, 2934 (1989) (O'Connor, J., concurring in part and dissenting in part)).

Haslip noted that, although the exemplary award was "much in excess of the fine that could be imposed," imprisonment was also authorized in the criminal context. *Haslip*, 499 U.S. at 23, 111 S.Ct. at 1046. Later, *State Farm* cautioned against overemphasizing the importance of criminal penalties that could be imposed:

> The existence of a criminal penalty does have bearing on the seriousness with which a State views the wrongful action. When used to determine the dollar amount of the award, however, the criminal penalty has less utility. Great care must be taken to avoid use of the civil process to assess criminal penalties that can be imposed only after the heightened protections of a criminal trial have been observed, including, of course, its higher standards of proof. Punitive damages are not a substitute for the criminal process, and the remote possibility of a criminal sanction does not automatically sustain a punitive damages award.

State Farm, 538 U.S. at 429, 123 S.Ct. at 1526.

Maryland courts have also weighed in on this guidepost by discussing similar factors in their punitive damages determinations. For instance, *Bowden* quoted *BMW* for the proposition that a court should "accord 'substantial deference' to legislative judgments concerning appropriate sanctions for the conduct at issue." *Bowden*, 350 Md. at 31, 710 A.2d at 280 (quoting *BMW*, 517 U.S. at 583, 116 S.Ct. at 1603).

Bowden added that

> [u]nder some circumstances, the maximum criminal fine for comparable conduct should not be given very much weight .... There are many serious criminal offenses chiefly aimed at individuals, rather than corporate entities, where the principal sanction is imprisonment, and the monetary penalty is relatively small. In this situation, the criminal fine for similar misconduct is not very pertinent .... In other situations, however, the maximum criminal or civil fine for similar misconduct may be acutely relevant. For example, if the defendant's malicious and wrongful conduct giving rise to the punitive damages award was the same as or similar to misconduct proscribed by the antitrust laws, the criminal and civil penalties under those laws have a great deal of relevance.

Bowden, 350 Md. at 31, 710 A.2d at 280. Further, this Court recognizes that

> there are other pertinent considerations in fixing an amount of punitive damages, and ... that criminal monetary penalties should not provide a cap for punitive damage awards. Nonetheless, in determining whether an award of punitive damages is proportionate to the defendant's misconduct, a court may consider, *inter alia*, the legislative policy reflected in statutes setting criminal fines.

Ellerin, 337 Md. at 242, 652 A.2d at 1130, n.13.

While this Court awards Plaintiff $10,968.28 in actual damages, it also declares the Deed and the Contract null and void and of no force and effect. This Order restores Ms. Smith's ownership of her home. This Court, therefore, adds the restoration of Ms. Smith's $200,000 of equity in her home to the actual damages amount, for a total of $210,968.28. This Court uses this amount as a multiplier for the purpose of determining the punitive damages amount.

Upon consideration of the three *BMW* guideposts, this Court is satisfied that Ms. Smith is entitled to at least the $500,000 in punitive damages that she requested. This amount is only slightly more than twice the total actual damages amount in this case of $210,968.28.

This Court recognizes that *Haslip* concluded that a punitive damages award of "more than 4 times the amount of compensatory damages" might be "close to the line." *Haslip*, 499 U.S. at 23, 111 S.Ct. at 1046. However, *Haslip* ultimately concluded that the punitive damages award, in that case, did not "cross the line into the area of constitutional impropriety." *Haslip*, 499 U.S. at 24, 111 S.Ct. at 1046. This Trial Court feels it is also well within that line based on its calculation of the "actual" damages as described above or even if the compensatory damages are considered without adding in the value of the equitable relief because in this case, as suggested by this Court's comments *supra*, this Court finds *BMW*'s "degree of reprehensibility" guidepost compelling. This punitive damages amount of $500,000 reflects this finding without risking constitutional impropriety.

ORDER

This matter having come before this Court for an Ex Parte Hearing, on the 12th day of December, 2005, and testimony and evidence having been taken herein, and the Court having made its findings of fact and conclusions of law, it is this 7th day of February, 2006, by this Circuit Court for Prince George's County, Maryland,

ORDERED, that the Deed recorded by Defendant Vincent L. Abell, dated May 1, 2004, and recorded among the Land Records of Prince George's County, Maryland in Liber 21777, folio 426, is hereby declared to be null, void, and of no further force and effect; and it is further

ORDERED, that judgment in favor of Plaintiff and against Defendant for actual damages in the amount of $10,968.28 is hereby granted; and it is further

ORDERED, that judgment for punitive damages in favor of Plaintiff and against Defendant in the amount of $500,000 is hereby granted; and it is further

ORDERED, that this judgment be entered in favor of Plaintiff and against Defendant in the amount of $510,968.28 and for costs with interest from the date of judgment.

Judge Steven I. Platt

Copies mailed by the Court to:

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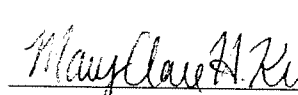

Mary Clare H. Kimber, Law Clerk — 2/7/06 Date